

Respondent argues the Board does not have jurisdiction to address the issue of medical treatment on review from a preliminary order. Respondent further contends claimant failed to file a timely request for review. Lastly, respondent argues the ALJ did not exceed her jurisdiction denying claimant's request designating a specific physician to provide her treatment.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Initially, the respondent contends that claimant failed to file a timely request for Board review. A written request for Board review of a decision made by an ALJ is governed by K.S.A. 44-551(b)(1) which provides in pertinent part:

All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation.

The ALJ entered the Order in this matter on June 30, 2003. Accordingly, the effective date of the Order was the day after or July 1, 2003.¹ The written application for review is only considered timely filed if received in the central office or one of the district offices of the division of workers compensation on or before the tenth day after the effective date of the order.² Excluding intermediate Saturdays, Sundays, and the July 4th holiday, ten days after the effective date of the Order would be July 16, 2003. Claimant's application for review was filed by fax³ and received on July 16, 2003. Consequently, the application for review was timely filed.

The claimant requested medical benefits including designation of a specific physician to provide authorized treatment. Respondent argues the Board does not have jurisdiction to address this issue on review from a preliminary order. The Board agrees.

K.S.A. 44-534a restricts the jurisdiction of the Appeals Board to consider appeals from preliminary hearing orders to the following issues:

- (1) Whether the employee suffered an accidental injury;
- (2) Whether the injury arose out of and in the course of the employee's employment;
- (3) Whether notice is given or claim timely made;

¹ See K.S.A. 44-525.

² See K.A.R. 51-18-2(b).

³ See K.A.R. 51-18-2(c).

(4) Whether certain defenses apply.

These issues are considered jurisdictional and subject to review by the Board upon appeals from preliminary hearing orders. The Board can also review a preliminary hearing order entered by an administrative law judge if it is alleged the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested.⁴

Jurisdiction is described in *Allen v. Craig*, 1 Kan. App. 2d 301, 303, 564 P.2d 552, rev. denied, 221 Kan. 757 (1977), as follows:

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly. (Citations omitted.)

In this instance, the issue deals with claimant's entitlement to ongoing medical care. K.S.A. 44-534a grants the ALJ the jurisdiction to decide issues dealing with the ongoing medical treatment and temporary total disability compensation. As such, neither issue would be considered outside the ALJ's jurisdiction and neither issue is listed in K.S.A. 44-534a as jurisdictional and subject to review by the Board from the appeal of a preliminary hearing order. Whether the administrative law judge must, in a given set of circumstance, authorize treatment from a physician chosen by claimant or from a list of three physicians designated by respondent is not a question which goes to the ALJ's jurisdiction. The ALJ may decide this question and has the jurisdiction to decide it wrongly. As such, the Board finds it does not have jurisdiction to consider the issue raised by respondent at this juncture of the proceedings.

AWARD

WHEREFORE, it is the finding of the Board that this review is dismissed and the Order of Administrative Law Judge Nelsonna Potts Barnes dated June 30, 2003, remains in full force and effect.

IT IS SO ORDERED.

Dated this _____ day of August 2003.

BOARD MEMBER

⁴ See K.S.A. 44-551.

c: Bruce L. Stewart, Attorney for Claimant
 Gary K. Albin, Attorney for Respondent and its Insurance Carrier
 Nelsonna Potts Barnes, Administrative Law Judge
 Paula S. Greathouse, Workers Compensation Director